IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 31627 of 2006(M)

PETITIONER:

IBY.K.JOHN, PHYSICAL EDUCATION
TEACHER, ST.THOMAS H.S.S., ERUVELLIPRA.

BY ADV. SRI.ISSAC M.PERUMPILLIL
SRI.JIJO PAUL KALLOOKKARAN

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CORPORATE MANAGER OF SCHOOLS,
CATHOLIC DIOCESE OF THIRUVALLA,
MARYGIRI, THIRUVALLA.

3. THE CORPORATE MANAGER OF SCHOOLS,
CATHOLIC DIOCESE OF MUVATTUPUZHA,
M.S.M. I.T.C. BUILDINGS, PIRAVOM.

4. THE DISTRICT EDUCATIONAL OFFICER,
THIRUVALLA.

5. THE DISTRICT EDUCATIONAL OFFICER,
MUVATTUPUZHA.

6. THE HEADMISTRESS, ST.JOSEPH'S HIGH
SCHOOL, PIRAVOM.

7. P.P.BABU, PHYSICAL EDUCATION TEACHER,
ST.JOSEPH'S H.S., PIRAVOM.

8. THE PRINCIPAL,
ST.THOMAS H.S.S., ERUVELLIPRA.

BY ADV. SRI.ELVIN PETER P.J.
GOVERNMENT PLEADER T.T.MUHAMOOD
SRI.TONY GEORGE KANNANTHANAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, ALONG WITH WPC NO. 33164 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 31627/06.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE MEMO DTD.15.4.05 BY R6.

P2. COPY OF THE LETTER OF R5 TO R6 DTD.4.7.05.

P3. COPY OF THE LETTER BY R6 DTD.7.7.05.

P4. COPY OF THE REPRESENTATION DTD.1.10.05 BEFORE R5.

P5. COPY OF THE LETTER DTD.2.12.05 BY R5.

P6. COPY OF THE JUDGMENT IN W.P.C.NO.15266/04.

P7. COPY OF THE GOVT. ORDER DTD.31.3.05.

P8. COPY OF THE JUDGMENT IN W.P.C.NO.31049/04 OF THIS COURT.

P9. COPY OF THE ORDER DTD.12.4.05 BY R2.

P10. COPY OF THE ORDER DTD.13.4.05 BY R3.

Sdk+

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P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).Nos.31627 & 33164 of 2006

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Dated this the day of September, 2007

J U D G M E N T

In these two writ petitions two physical education teachers in schools under the same educational agency who competed for retention consequent to abolition of post, after having succeeded in ensuring place for both after a series of departmental orders and judgments of this court, now are aggrieved by the orders of educational authorities regarding payment of salary for the period during which the dispute between them was current, which dispute was resolved with retrospective effect. This situation arose in the following factual scenario. [While narrating the facts I shall refer to the exhibits as obtaining in W.P(C). No.33164/2006 unless otherwise mentioned].

2. The corporate Educational Agency of the Diocese of Thiruvalla had 5 schools, namely, 1.St. George's High School, Kottankal, 2. St.Mary's High School, Anikkad, 3. St.Thomas High

School, Eruvallipra, 4. St.Joseph's High School, Piravom and 5. St.Philomina's High school, Thiruvaniyoor. (Hereinafter I shall, for convenience, refer to the schools by the name of the place where the same is located). In these schools, for the period in dispute, there were four physical education teachers who, in the order of their seniority were 1.Mathukutty George having 33 years of service, 2.P.P.Babu, having 18 years of service [Petitioner in W.P (C).No.33164/06), 3.Iby K.John, having 3 years of service [petitioner in W.P(C).No. 31627/06] and 4. C.J.James, the junior-most. Sri.Mathukutty George was working in the Anikkad School, P.P.Babu was working in the Thiruvaniyoor school, Smt.Iby.K.John was working in the Piravom School and Sri.James was working in the Eruvallipra school.

3. During the academic year 2002-03 the Educational agency was bifurcated into two. The Kottankal, Anikkad and Eruvallipra schools came under Catholic Diocese of Thiruvalla and the Thiruvaniyoor and Piravom schools came under the Catholic Diocese of Muvattupuzha. This bifurcation was approved by the educational authorities with effect from 1.9.2003.

4. By staff fixation order dated 15.7.2003 for the

academic year 2002-03, one post of Physical Education teacher was abolished in the Thiruvaniyoor school. In order to avoid retrenchment of one of the teachers, the Corporate manager requested the Deputy Director of Education, Ernakulam, to allow Sri.Babu to continue in service on clubbing arrangement with St.Sebastian's L.P.School, Gothuruth, which was allowed and Sri.Babu continued in service. Later on by Ext.P2 order dated 9.12.2003 the Deputy Director cancelled the clubbing arrangement as irregular. Sri.Babu had drawn salary till 14.7.2003 and thereafter no salary was paid to him. By Ext.P2, the Deputy Director directed the Corporate Manager to accommodate the petitioner in any other school under the Educational Agency.

5. By Ext.P3 order dated 13.1.2004, the Manager posted Sri.Babu at the Piravom school retrenching Smt.Iby K.John. In appeal filed by Smt.Iby.K.John Ext.P3 order was confirmed by Ext.P4 order dated 19.4.2004 passed by the Director of Public Instruction. In W.P(C).No.15266 of 2004 filed by Smt.Iby K.John, claiming herself to be having 25 years of service, in which Sri.Babu was not made a party, by Ext.P5 judgment dated

21.5.2004, this Court directed the Government to consider the representation filed by Smt.Iby K.John. By Ext.P6 order dated 7.10.2004, the Government directed that Sri.Babu be transferred to Eruvallipra school and to post Smt.Iby K.John at Piravom.

6. In the meantime, the post of Physical Education teacher in the Anikkad School, where the senior most Physical Education Teacher Sri.Mathukutty George was working, was also abolished. Although by virtue of Ext.P7 Government Order, he was entitled to be retained at Anikkad School, Sri.Mathukutty George was transferred to Eruvallipra School, retrenching Sri.C.J.James. Sri.Babu and Sri.James filed W.P(C).No.31049/04 and 31329/2004 respectively in which by Ext.P8 common judgment, this court directed the Government to reconsider the matter. Pursuant thereto, the Government passed Ext.P9 order dated 31.3.2005 permitting Sri.Mathukkutty George to continue at Anikkad school, retaining Sri.Babu and Smt.Iby K.John at Piravom and Eruvallipra schools respectively and upholding retrenchment of Sri.James, with retrospective effect from 15.7.2003.

7. Although the issue of entitlement among the four

teachers was finally settled by Ext.P9 order, Sri.P.P.Babu was not paid salary from 14.7.2003 onwards. In W.P(C).No.7123/2006 filed by Sri.Babu, this court by Ext.P10 judgment directed the D.E.O. to consider the issue. By Ext.P11 order, the D.E.O. directed release of salary of Sri.Babu from 1.2.2005 onwards. Therein, it was also directed that "the salary of Sri.P.P.Babu, P.E.Teacher transferred to the post of P.E.Teacher in SJHS, Piravom, with retrospective effect from 15.07.2003 to 31.1.2005 can be released only after refunding the excess salary drawn by Smt.Iby K.John in the said period". This was on the reasoning that since Smt.Iby K.John was working in the Piravom School for the said period, there is no provision for claiming salary for two persons in a single sanctioned post for the same period.

8. Pursuant to order of the Government [Ext.P9 in W.P (C).No.33164/2004 which is Ext.P7 in W.P(C).No.31627/2006] the respective Managers of the two educational agencies issued orders dated 12.4.2005 and 13.4.2005 posting Sri.P.P.Babu at Piravom School and posting Smt.Iby.K.John at Eruvallipra with retrospective effect from 15.7.2003 [These orders are produced as Exts.P9 & P10 in W.P(C).No. 31627/2006 filed by Smt.Iby

K.John].

9. Sri.P.P.Babu, in his writ petition is challenging denial of salary to him for the period from 15.7.2003 to 31.1.2005 and Smt.Iby K.John is challenging the retrospective posting and consequent direction to refund the salary drawn by her for the period from 15.7.2003 to 31.1.2005, with a further prayer to pay to her the arrears of salary for the period from 1.2.2005 onwards and to direct the Headmistress of the Piravom School to forward her LPC and service book to enable disbursement of her salary.

10. With the help of the counter affidavit filed by the D.E.O., in W.P(C).No.33164/2006 the Government Pleader supports the action of the educational authorities.

11. After considering the rival contentions I find that there is actually no dispute between the parties. Both Sri.P.P.Babu and Smt.Iby K.John are satisfied with the present posting as per Ext.P9. Sri.Mathukkutty George is happy to continue at Anikkad School. Sri.James has not challenged the present orders. That being so, all along there were two posts either at the Piravom school or at the Eruvallipra school to accommodate both Sri.P.P.Babu and Smt.Iby K.John. Both were working in either

one or the other of the two schools through out without any break. As such, both of them are entitled to salary for the entire period they worked. Since there were two posts and the two teachers worked throughout, the educational authorities also cannot have any objection in paying salary to both of them for the disputed period. The question is only of adjusting their lien in one or the other of the two schools for the relevant period. For this purpose, I do not think that it is necessary first to direct Smt.Iby K.John to refund the salary received by her and to pay salary to both only thereafter. Therefore, the salary drawn by Smt.Iby K.John in one school shall be adjusted against the salary due to her in the school where she is directed to be posted with retrospective effect. Salary due to Sri.P.P.Babu for the period from 15.7.2003 to 31.1.2005 shall also be paid as if he has worked in the Piravom school during that period also. Salary due to Smt.Iby K.John for the period from 1.2.2005 shall also be drawn and disbursed to her. The D.E.O., Thiruvalla and the D.E.O., Muvattupuzha shall issue appropriate orders to put into effect the above directions within one month from the date of receipt of a copy of this judgment. The Headmaster/Headmistress

of the school shall present the salary bills also accordingly and shall forward the LPCs and service books accordingly. The impugned orders, contrary to the above are quashed.

The two writ petitions stand disposed of on the above terms.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge.